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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 572

SCHINE CHAIN THEATRES, INC., *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

PETITION FOR REHEARING AND MOTION FOR LEAVE TO FILE NEW STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE RULES OF THE COURT.

WILLARD S. McKAY,
Counsel for Appellants.

HAROLD R. MEDINA,
ARTHUR GARFIELD HAYS,
OSMOND K. FRAENKEL,
RICHARD T. DAVIS,
Of Counsel.

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PETITION FOR REHEARING AND MOTION FOR LEAVE TO FILE NEW STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE RULES OF THE COURT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellants herein respectfully petition the Court to grant a rehearing in this cause and move for leave to file a new statement as to jurisdiction under Rule 12 of the Rules of the Court.

Appellants further respectfully pray that on rehearing this Court vacate its order of December 16, 1946, dismissing this appeal for failure to comply with Rule 12 of the Rules of this Court, and reinstate the appeal on the docket and calendar of the Court for plenary hearing on the merits.

This appeal was taken, as of right, under Section 2 of the Expediting Act of February 11, 1903, as amended (32

Stat. 823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. § 29), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. § 345), from a final decree of the United States District Court for the Western District of New York in this proceeding in equity brought under Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2), wherein the United States is the complainant. The appeal was allowed by the District Court by order dated August 26, 1946, and no statement opposing jurisdiction, or motion to dismiss or affirm, was filed by the appellee.

On December 16, 1946, this Court entered an order herein dismissing this appeal "for failure to comply with Rule 12 of the Rules of this Court."

It is believed that the refusal of this Court to rule on the merits of the appeal, or to provide for plenary hearing on the same, resulted from the filing of what the Court considered to be an inadequate statement as to jurisdiction under Rule 12, particularly as regards the statement of the issues involved in the case and the substantial questions presented thereby.

Accordingly, appellants ask leave to file, and do present to the Court herewith, a new statement as to jurisdiction under Rule 12 which it is believed remedies any defect in the statement previously filed.

The gravity of appellants' situation is obvious. The decree entered by the District Court herein is drastic and ruinous to appellants' business. It requires the sale by a trustee of 40 or more of appellants' theatre properties; and, as to the theatres they are allowed to retain, severely limits and restricts the manner in which they may be operated. As set forth in the statement of jurisdiction submitted herewith, the propriety of finding appellant to have violated the

Sherman Act and of granting the extraordinary and drastic relief here ordered, raises many and most serious questions.

Appellants respectfully urge that they are entitled to an appeal in which these questions, now believed properly to be brought to the attention of this Court, will be disposed of on their merits. Appellants respectfully urge, further, that the questions involved are clearly of such a character as to warrant plenary hearing by the Court.

Appellants have not had their case considered on its merit on appeal, and cannot obtain such consideration, unless the Court reconsiders its order dismissing this appeal. The present appeal stands dismissed. Appellants cannot now take a new appeal since the statute governing appeals in this proceeding (15 U. S. C. § 29) provides that appeals must be taken within sixty days of the entry of the decree appealed from, and such period had expired when this Court entered its order dismissing this appeal.

Appellants accordingly respectfully petition the Court to grant a rehearing, and, on considering the new statement as to jurisdiction submitted herewith, to reinstate this appeal on the docket and calendar of the Court so that plenary hearing may be had on the issues raised thereby.

Respectfully submitted,

WILLARD S. McKAY,
Counsel for Appellants.

January 7, 1947.

HAROLD R. MEDINA,
ARTHUR GARFIELD HAYS,
OSMOND K. FRAENKEL,
RICHARD T. DAVIS,
Of Counsel.

Certificate of Counsel

I do hereby certify that this petition is presented in good faith and not for delay.

WILLARD S. McKAY,
Counsel for Appellants.